



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO. 358 OF 2011**

**IN THE MATTER OF THE ESTATE OF SAMWEL**

**ITONGA MAITAI alias ITONGA MAITAI (DECEASED)**

**JAMLIK MURIITHI SAMUEL.....PETITIONER**

**VERSUS**

**CORDINA MBAE SAMUEL.....OBJECTOR**

**R U L I N G**

1. Before me is a Summons dated 14<sup>th</sup> December, 2017 for what the applicant calls ‘**an order to rectify and order a re-survey of the estate property**’. It is brought under **section 3 & 3A of the Civil Procedure Rules**. The orders are sought in respect of parcel number **R.L ABOGETA/L.KITHANGARI/617**.

2. The gist of the application is that the petitioner wrongly surveyed the deceased’s parcel of land without consulting other members of the family. That the petitioner surveyed and gave the applicant a sloppy area whereas he enjoyed fertile land as evidenced by the sketch plan. The applicant further asked that the Court order the rectification of the petitioner’s exercise and the repeat of the survey as per the entire’s family wish.

3. The Application was opposed through a Replying Affidavit sworn by the petitioner on 24<sup>th</sup> February, 2018. He deposed that; as per the wishes of the deceased, the Interested Party got his share and even sold some portions to third parties; that the application is brought in bad faith and is meant to delay the fair distribution of the estate of the deceased. He urged the Court to dismiss the application with costs to him.

4. I have carefully considered the affidavits on record and the rival contentions by the parties. The court had ordered that the application be determined by way of written submissions. None of the parties had filed their submissions as at the time of writing this ruling.

5. I have considered the entire record and the issue for determination is whether this court should order a re-survey of land Parcel No. ABOGETA/L.KITHANGARI/617.

6. The question is whether this court has jurisdiction to direct an administrator on how to effect the distribution of the estate on the ground. Whereas the court has no adequate expertise to do so, where there is a proper and needy application, the court may intervene in order to render justice. This is because, even after the court has confirmed the grant, an administrator is still required to give an account to the court. Further, **section 47 of the Law of Succession Act, Cap 160 of the Laws of Kenya** gives the court power to give such orders as may be necessary for the ends of justice.

7. In the present case, the applicant alleges that the applicant distributed to him a sloppy area while he parceled for himself a fertile area. On his part, the petitioner stated that the estate was divided according to the wishes of the deceased and that the applicant had already sold part of his land to a third party. He produced a sale agreement dated 12<sup>th</sup> July, 2012 to buttress this allegation. That the third party has already constructed a permanent house on the portion sold by the applicant.

8. I have seen the sale agreement between the applicant and Ceaser Ikunda and Catherine Ikunda dated 12<sup>th</sup> July 2012. They bought three acres from the applicant for Kshs.900,000/-. It was alleged that they had already constructed a permanent house thereon. How will the property be re-surveyed now when the applicant has by his own action fundamentally changed it by introducing third parties thereunto? How are we to deal with the third party whom he willingly brought to the estate property and now has entrenched rights.

9. In view of the foregoing, I find the application to be without merit and I hereby dismiss the same. I will make no order as to costs.

**SIGNED at Meru**

**A. MABEYA**

**JUDGE**

**DATED and DELIVERED at Meru this 11<sup>th</sup> day of October, 2018.**

**A. ONG'INJO**

**JUDGE**